Hovsepian v. Apple, Inc. Doc. 150 Att. 3

EXHIBIT D

Dockets.Justia.com

LAW OFFICES
KEKER & VAN NEST
LLP
710 SANSOME STREET
SAN FRANCISCO, CA 94111-1704
TELEPHONE (415) 391-5400
FAX (415) 397-7188
WWW.KVN.COM

DAN JACKSON
DJACKSON@KVN.COM

January 19, 2006

VIA ELECTRONIC MAIL

Alan P. Block, Esq.
Hennigan, Bennett & Dorman LLP
601 S. Figueroa Street
Suite 3300
Los Angeles, CA 90017

Re: *In re Acacia Media Technologies Corp.*,
Case No. C 05-1114 (MDL 1665)

Dear Alan:

The cable and satellite defendants, and the New Destiny group of defendants represented by Fish & Richardson, have reviewed your proposed stipulation, and have made some changes to it in the attached redline. First, we do not agree to a Rule 54(b) certification, and do not think that the Federal Circuit will agree to hear this case piecemeal in any event, so we have deleted the language related to the Rule 54(b) issue. Second, some of the language in your draft could be read to imply that defendants make, use or sell transmission systems (within the meaning of the patent) that are located at more than one location, which we do not concede, so we have removed that language. Third, we have left in your reservation of rights on appeal, but have removed the clause that follows it because it is either redundant or implies that you have rights other than those normally provided for by law. There are also a few minor corrections of a typographical or factual nature (e.g., more claims contain the term "sequence encoder" than you originally listed).

We have also reviewed your response to my letter of January 5, 2006 in which you state that you will not include claims 10-13 of the '863 patent in your forthcoming infringement contentions. That is fine, but does not preclude you from attempting to reassert those claims—or the claims in the other patents at issue that contain the term "identification encoding means"—in your final infringement contentions, or from asserting those claims against us in another jurisdiction. Accordingly, we ask that you covenant not to sue defendants on any of the following claims: 1-18 of the '992 patent, claims 1-2 and 10-13 of the '863 patent, claims 1, 4, and 7 of the '275 patent, and claims 1-3 of the '720 patent.

I look forward to your response.

Sincerely,

DAN JACKSON

DEJ

cc: All Counsel of Record

COUNSEL LISTED ON SIGNATURE PAGES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: ACACIA MEDIA TECHNOLOGIES CORPORATION PATENT LITIGATION	Case No. C 05-01114 MDL No. 1665 **[PROPOSED] STIPULATED SUMMARY JUDGMENT OF NONINFRINGEMENT AND INVALIDITY FOR INDEFINITENESS OF US PATENT NO. 6,144,702**

Hennigan, Bennett & Dorman llp
lawyers
los angeles, california

On December 7, 2005, the Honorable James Ware issued the "Further Claim Construction Order; Order Finding Claims Terms Indefinite And Claims Invalid" ("Order"). In the Order, the Court found, among other things, the following:

1. that the claim term "sequence encoder," which appears in independent claims 1 and 17 and in dependent claims 7, 18, 32, and 33 of U.S. Patent No. 6,144,702 ("the '702 patent"), is indefinite;

2. that the claim term "identification encoder," which appears in independent claims 1, 17, and 27 and in dependent claims 5, 6, 19, and 31 of the '702 patent, is indefinite; and

3. that the claim phrase "transmission system at a first location," which appears in independent claims 1, 17, and 27 of the '702 patent, means "a transmission system at one particular location separate from the location of the reception system."

The parties agree that the effect of the Court's finding that the term "sequence encoder" in claims 1, 7, 17, 18, 32, and 33 is indefinite and finding that the term "identification encoder" in claims 1, 17, and 27 is indefinite, if upheld on appeal, would be to render all of the claims of the '702 patent (claims 1-42) indefinite, and therefore invalid, under 35 U.S.C. § 112, ¶ 2.

The parties also agree that the effect of the Court's construction of the phrase "transmission system at a first location" in claims 1, 17, and 27 of the '702 patent as meaning "a transmission system at one particular location separate from the location of the reception system," if upheld on appeal, would be to render all of the claims of the '702 patent (claims 1-42) not infringed by defendants.

Accordingly, the parties to the cases listed below agree and request entry of summary judgment of: (1) invalidity for indefiniteness of claims 1-42 of the '702 patent on the basis that the Court has found that the terms "sequence encoder" and "identification encoder" of claims 1-42 of the '702 patent are indefinite; and (2) non-infringement of claims 1-42 of the '702 patent on the basis that the Court has construed the phrase "transmission system at a first location" to mean "a transmission system at one particular location separate from the location of the reception system." This Summary Judgment is without prejudice as to all rights of Acacia on appeal.

THEREFORE, IT IS ADJUDICATED, as a matter of law, that Plaintiff Acacia shall take nothing as to all defendants listed below on its claim for infringement of its '702 patent, and that, as to all defendants listed below, the Court shall enter Summary Judgment of: (1) invalidity of claims 1-42 for indefiniteness on the basis that the Court has found that the terms "sequence encoder" and "identification encoder" of claims 1-42 of the '702 patent are indefinite; and (2) non-infringement of claims 1-42 on the basis that the Court has construed the phrase "transmission system at a first location" to mean "a transmission system at one particular location separate from the location of the reception system," which would thereby cause claims 1-42 of the '702 to not be infringed by defendants. The entry of this Summary Judgment is without prejudice to Acacia's rights as outlined above.

Separate N.D. Cal. Case Number	**Defendant(s)**
05-CV-01561 JW	Game Link, Inc.
05-CV-01562 JW	Club Jenna, Inc. and CJ, Inc.
05-CV-01563 JW	1. Cybernet Ventures, Inc. 2. ACMP, LLC 3. Global Media Resources SA
05-CV-01564 JW	Global AVS, Inc., dba DrewNet
05-CV-01565 JW	1. ICS, Inc. 2. AP Net Marketing, Inc.
05-CV-01566 JW	National A-1 Advertising, Inc.
05-CV-01568 JW	New Destiny Internet Group
05-CV-01569 JW	Audio Communications
05-CV-01570 JW	VS Media, Inc.
05-CV-01571 JW	Ademia Multimedia, LLC

Separate N.D. Cal. Case Number	Defendant(s)
05-CV-01572 JW	1. International Web Innovations, Inc. 2. Offendale Commercial Ltd. BV
05-CV-01573 JW	Adult Entertainment Broadcast Network
05-CV-01574 JW	Cybertrend, Inc.
05-CV-01575 JW	Lightspeedcash
05-CV-01576 JW	1. Adult Revenue Service 2. Innovative Ideas International 3. Global Intermedia, Inc. 4. Askcs.com, Inc.
04-CV-02308 JW	1. Comcast Cable Communications, LLC 2. Charter Communications, Inc. 3. The DIRECTV Group, Inc. 4. Echostar Technologies Corp. 5. Echostar Satellite LLC 6. Hospitality Network, Inc. 7. Coxcom, Inc.
04-CV-03789 JW	Mediacom Communications Corporation
05-CV-01399 JW	1. Mid-Continent Media, Inc. 2. US Cable Holdings LP 3. Savage Communications Inc. 4. Loretel Cablevision 5. Arvig Communication System 6. Cannon Valley Communications, Inc. 7. Sjoberg's Cablevision, Inc.
05-CV-01543 JW	1. Armstrong Group 2. Block Communications, Inc, dba Buckeye

Separate N.D. Cal. Case Number	Defendant(s)
	Cable 3. Wide Open West LLC 4. Massillon Cable TV, Inc.
05-CV-01598 JW	1. Cable America Corporation 2. Cable One, Inc. 3. NPG Cable, Inc.
05-CV-01703 JW	Cebridge Communications

SO ORDERED.

Date: ______________ ____________________________________
United States District Judge

Stipulated to and agreed upon:

Dated: January ___, 2006

RODERICK G. DORMAN (CA SBN 96908)
ALAN P. BLOCK (CA SBN 143783)
KEVIN I. SHENKMAN (CA SBN 223315)
HENNIGAN, BENNETT & DORMAN LLP
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017

BY:______________________

ATTORNEYS FOR PLAINTIFF
ACACIA MEDIA TECHNOLOGIES CORPORATION

Dated: January ___, 2006

VICTOR G. SAVIKAS (CA SBN 145658)
KEVIN G. McBRIDE (CA SBN 195866)
MARSHA E. MULLIN (CA SBN 93709)
MARIA K. NELSON (CA SBN 155608)
JONES DAY
555 West Fifth Street, Suite 4600
Los Angeles, California 90013-1025

By:______________________
Victor G. Savikas

Attorneys for Defendant
THE DIRECTV GROUP, INC.

Dated: January ___, 2006

HAROLD J. McELHINNY (CA SBN 66781)
RACHEL KREVANS (CA SBN 116421)
PAUL A. FRIEDMAN. (CA SBN 208920)
JASON A. CROTTY (CA SBN 196036)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482

DAVID C. DOYLE (CA SBN 70690)
MORRISON & FOERSTER LLP
3811 Valley Centre Dr., Suite. 500
San Diego, California 92130

By:______________________________
Harold J. McElhinny

Attorneys for Defendants
ECHOSTAR SATELLITE LLC and ECHOSTAR TECHNOLOGIES CORPORATION

Dated: January ___, 2006

DARALYN J. DURIE (CA SBN 169825)
DAVID J. SILBERT (CA SBN 173128)
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, California 94111-1704

By:______________________________
David Silbert

Attorneys for Defendant
COMCAST CABLE COMMUNICATIONS, LLC

Dated: January ___, 2006

ANNAMARIE A. DALEY (*pro hac vice*)

STEPHEN P. SAFRANSKI (*pro hac vice*)
ROBINS, KAPLAN, MILLER & CIRESI LLP
2800 LaSalle Plaza, 800 LaSalle Avenue
Minneapolis, Minnesota 55402

RICHARD R. PATCH (CA SBN 88049)
J. TIMOTHY NARDELL (CA SBN 184444)
COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200
San Francisco, California 94111-4213

By:______________________________
Annamarie A. Daley

Attorneys for Defendants
COXCOM, INC. and HOSPITALITY NETWORK, INC.

Dated: January ___, 2006

BRADFORD LYERLA (*pro hac vice* app. pending)
KEVIN HOGG (*pro hac vice* app. pending)
JEFFREY DEAN (*pro hac vice* app. pending)
MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357

MORGAN W. TOVEY (CA SBN 136242)
WILLIAM R. OVEREND (CA SBN 180209)
REED SMITH LLP
Two Embarcadero Center, Suite 2000
San Francisco, CA 94111

By:______________________________
Jeffrey Dean

Attorneys for Defendant
CHARTER COMMUNICATIONS, INC., WIDE OPEN WEST, ARMSTRONG UTILITIES, MASSILON CABLE TV, INC., EAST CLEVELAND CABLE TV, MID-CONTINENT MEDIA, INC., CANNON VALLEY COMMUNICATIONS, US CABLE HOLDINGS, LP, ARVIG ENTERPRISES, SJOBERG CABLE, LORETEL SYSTEMS, INC., NPG CABLE, INC.

DATED: January ___, 2006

REBECCA ANNE BORTOLOTTI
JOHN CHRITOPHER REICH
ALBERT L. UNDERHILL
MERCHANT & GOULD
80 S. 8th Street, Suite 3200
Minneapolis, Minnesota 55402

By______________________
Rebecca Anne Bortolotti

Attorneys for Defendants
MID-CONTINENT MEDIA, INC., SAVAGE COMMUNICATIONS, INC., CANNON VALLEY COMMUNICATIONS, US CABLE HOLDINGS, LP, ARVIG ENTERPRISES, SJOBERG'S CABLE, LORETEL SYSTEMS, INC.,

DATED: January ___, 2006

JUANITA R. BROOKS
TODD G. MILLER
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130-2081

By______ __________
Todd R. Miller

Attorneys for Defendants
NEW DESTINY INTERNET GROUP, L.L.C., AUDIO COMMUNICATIONS, INC., VS MEDIA, INC., ADEMIA MULTIMEDIA, LLC, CYBERHEAT, INC., AEBN, INC., LIGHTSPEED MEDIA CORPORATION, INNOVATIVE IDEAS INTERNATIONAL, LTD., GAME LINK, INC., AND CYBERTREND, INC.

DATED: January ___, 2006

JONATHAN E. SINGER
WILLIAM R. WOODFORD
FISH & RICHARDSON P.C.
60 South Sixth Street, Suite 3300
Minneapolis, Minnesota 55402

By_______________________________
Jonathan E. Singer

Attorneys for Defendants
NEW DESTINY INTERNET GROUP, L.L.C., AUDIO COMMUNICATIONS, INC., VS MEDIA, INC., ADEMIA MULTIMEDIA, LLC, CYBERHEAT, INC., AEBN, INC., LIGHTSPEED MEDIA CORPORATION, INNOVATIVE IDEAS INTERNATIONAL, LTD., GAME LINK, INC., AND CYBERTREND, INC.

DATED: January ___, 2006

WILLIAM J. ROBINSON
VICTOR DE GYARFAS
FOLEY & LARDNER
2029 Century Park East, 35th Floor
Los Angeles, California 90067

By______
Victor de Gyarfas

Attorneys for Defendants
International Web Innovations, Inc. and
OFFENDALE COMMERICAL LIMITED BV

DATED: January ___, 2006

DOUGLAS W. SPRINKLE
MARK D. SCHNEIDER
GIFFORD, KRASS, GROH, SPRINKLE, ANDERSON & CITKOWSKI, P.C.
280 N. Old Woodward Avenue, Suite 400
Birmingham, Michigan 48009-5394

ALFREDO A. BISMONTE
BOBBY T. SHIH
MOUNT & STOELKER, P.C.
333 W. San Carlos St., 17th Floor
San Jose, California 95110-2740

By________________
Bobby T. Shih

Attorneys for Defendant
ASKCS.COM, INC.

DATED: January ___, 2006

GARY A. HECKER
JAMES M. SLOMINSKI
THE HECKER LAW GROUP
1925 Century Park East, Suite 2300
Los Angeles, California 90067

By________________
James M. Slominski

Attorneys for Defendant
OFFENDALE COMMERCIAL BV, LTD.

DATED: January ___, 2006

DAVID A. YORK
LATHAM & WATKINS
135 Commonwealth Drive
Menlo Park, California 94025

By________________
David A. York

Attorneys for Defendants
ICS, Inc. and AP Net Marketing, Inc.

DATED: January ___, 2006

MITCHELL D. LUKIN
BAKER BOTTS LLP
One Shell Plaza
910 Louisiana
Houston, Texas 77022

JEFFREY D. SULLIVAN
MICHAEL J. MCNAMARA
BAKER BOTTS LLP
30 Rockefeller Plaza
New York, New York 10112

STEPHEN E. TAYLOR
TAYLOR & CO. LAW OFFICES, INC.
One Ferry Building, Suite 355
San Francisco, California 94111

By_______ ________
Mitchell D. Lukin

Attorneys for Defendant
MEDIACOM COMMUNICATIONS CORPORATION, CABLE ONE INC., and CEQUEL III COMMUNICATIONS I, LLC (d/b/a CEBRIDGE CONNECTIONS).

DATED: January ___, 2006

SEAN DAVID GARRISON
ROBERT FRANCIS COPPLE
LEWIS & ROCA LLP
40 N. Central Avenue
Phoenix, Arizona 85004-4429

By_______/ _______
Sean David Garrison

Attorneys for Defendant
CABLE AMERICA CORP.

DATED: January ___, 2006

PATRICK J. WHALEN
SPENCER FAN BRITT & BROWN LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106

By________________________________
Patrick J. Whalen

Attorneys for Defendants
NPG CABLE INC.

DATED: January ___, 2006

FRITZ BYERS
520 Madison Avenue
Toledo, Ohio 43604

By________________________________
Fritz Byers

Attorneys for Defendants
BLOCK COMMUNICATIONS, INC.

DATED: January ___, 2006

CHRISTOPHER B. FAGAN
FAY SHARPE FAGAN MINNICH & MCKEE
1100 Superior Avenue, Seventh Floor
Cleveland, Ohio 44114-2518

By________________________________
Christopher B. Fagan

Attorneys for Defendants
ARMSTRONG GROUP; EAST CLEVELAND TV AND COMMUNICATIONS LLC; MASSILLON CABLE TV, INC.; WIDE OPEN WEST, LLC